IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 1208 of 2001(A)

O.P(MV).NO.1363/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.
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APPELLANT/PETITIONER:

SARAKUTTY, W/O. PATHROSE,
CHATHURUTHYIL, CHENGARA,
KEERAMPARA VILLAGE.

BY ADV. SRI.SIBY MATHEW,
SMT.ANNIE PAUL.

RESPONDENTS:
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1. **THE DIRECTOR,**
   RELIANT HIRE PURCHASING CO. LTD.,
   KOTHAMANGALAM.

2. **ASHARAF, S/O. KUNJU BAVA,**
   KIZHAKKEVEETTIL AYAKKADU KARA,
   THRIKKARIYOOR VILLAGE.

3. **THE BRANCH MANAGER,**
   THE ORIENTAL INSURANCE COMPANY LTD.,
   KOTHAMANGALAM.

BY ADV. SRI.MATHEWS JACOB.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1208 of 2001

Dated this the 13th day of June, 2007

Judgment

Koshy, J.

Appellant while travelling in an autorickshaw on 30.9.1999 met with an accident and the above autorickshaw overturned. He sustained very serious injuries. He was admitted in the nearby hospital and was treated as an inpatient for 22 days. He continued the treatment thereafter also as an outpatient. As a result of the accident, he sustained a fracture on the right clavicle, incised wound on the scalp, pain and swelling on spine area with fracture L5 - S1 and dislocation. By Ext. A1 disability certificate, doctor assessed disability at 25%. Doctor found the following difficulties:

> "(i) Flexion of the vertebral column is painful beyond 75%;
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> (ii) Numbness of left lower limb;
>
> (iii) X-ray lumbar spine shows (pondylolisthesis L5 - S1);

(iv) Numbness of right little finger always and numbness of the whole upper limb on raising the limb above the shoulder."

Doctor was examined as PW1. He deposed that forward displacement of L5 over S1 has caused the serious deformity. It is also said that as a casual labourer it will difficult for her to do manual work with the above deformities. The doctor also deposed that on raising hands she is complaining of numbness and the disability assessed is on the basis of the McBride scale. The main injury was to L5 and S1. Due to the fracture to the clavicle she was not able to raise her hands above the shoulder level. It is also let in from the evidence that forward displacement of L5 over S1 cause difficulty for the petitioner. She has numbness to the lower limb. Finger movements are also restricted.

2. The claimant, during examination, stated that she is unable to do any manual work because of the injuries sustained in the accident. She was a manual labourer. According to her, she is completely disabled due to the above accident. Even though doctor assessed 25% disability, tribunal has assessed only 18% disability. We are of the opinion that the tribunal

reduced the whole body disability certified by the doctor, without any valid reason. Even though she is not entitled to 100% disability and loss of earning power, we are of the opinion that at least 25% disability as certified by the doctor should have been awarded. Even though, according to her she was getting Rs.4,500/- per month, in the absence of data, tribunal assessed Rs.1,500/- per month. We see no ground to interfere in the same.

3. The Tribunal has taken 16 as the multiplier taking guidance from the second schedule and no grounds are made out for increasing the above multiplier. If compensation for loss of earning power is calculated for 25% disability, compensation payable will be Rs.1500 x 12 x 16 x $\frac{25}{100}$ = Rs.72,000/-. The tribunal has awarded only Rs.51,850/-. So, additional compensation payable will be Rs.20,150/-. The tribunal has awarded just and reasonable compensation under other heads. The above additional compensation of Rs.20,150/- over and above the amount awarded by the tribunal should be deposited by the third respondent insurance company with 8% interest from

the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1208/2001

JUDGMENT

Dated:13th June, 2007